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April 4, 2011

Via Hand Delivery and Electronic Mail

Susan M. Hudson, Clerk
Vermont Public Service Board
Chittenden Bank Building, Fourth Floor
112 State Street, Drawer 20
Montpelier, VT 05620

Re: Joint Petition of GMP, VEC and VELCO for Certificate of Public Good, pursuant to 30 V.S.A. §248, to Construct up to a 63 MW wind electric generation facility and associated facilities, on Lowell Mountain, in Lowell, Vermont, and the installation and upgrade of approximately 16.9 miles of transmission line and associated sub-stations in Lowell, Westfield and Jay, Vermont – Docket No. 7628

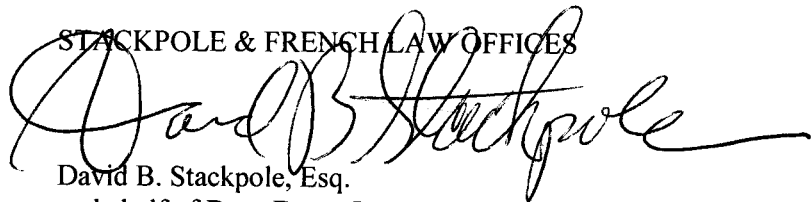
Dear Ms. Hudson:

Enclosed please find the original and eight (8) copies of the Reply Brief of Dyer-Dunn, Inc.

Thank you.

Sincerely,

STACKPOLE & FRENCH LAW OFFICES

A large, stylized handwritten signature in black ink, appearing to read 'David B. Stackpole', is written over the printed name and firm name.

David B. Stackpole, Esq.
on behalf of Dyer-Dunn, Inc.

DBS/krq

cc: Service List (via regular mail and electronic mail)

STATE OF VERMONT
PUBLIC SERVICE BOARD

Joint Petition of Green Mountain Power Corporation,)
Vermont Electric Cooperative, Inc., Vermont Electric)
Power Company, Inc., and Vermont Transco LLC,)
for a Certificate of Public Good, pursuant to 30 V.S.A.)
Section 248, for authority to construct up to a 63 MW)
wind electric generation facility and associated facilities)
on Lowell Mountain in Lowell, Vermont, and the)
installation or upgrade of approximately 16.9 miles of)
transmission line and associated substations in Lowell,)
Westfield and Jay, Vermont.)

Docket No. 7628

REPLY BRIEF OF DYER-DUNN, INC.

NOW COMES Intervener Dyer-Dunn, Inc. and hereby provides the following Reply Brief in the above-captioned matter.

I. THE PROJECT WILL HAVE AN UNDUE ADVERSE EFFECT ON AESTHETICS

“There is no disagreement that the project will have an adverse impact.” (See Petitioners’ Brief at Page 1.)

II. THE PROJECT EFFECT WILL BE UNDUE

When examined within construction of the statute, the effect will be undue.

The project is shocking or offensive to the average person.

In crafting the average person, I consider the 625,000 people attributed by the U.S. Census Bureau as the 2010 population of the State of Vermont.

It is safe to assume that a great many of these people, perhaps half or more have never seen the Lowell Mountain Range. It is also reasonable to assume almost all of them have never been in close proximity to a 3.0 MW 450' wind turbine erected on a rural ridge line.

Is it not then reasonable to pay extra attention to the reaction of people who are located within the view shed of the proposed project when we craft this average person whom we seek to protect from aesthetic degradation. (See Petitioners' Brief at fn 19 on page 5.)

Do the sensibilities of the Vermont destination resort visitor, the travelling tourist or second home seekers and relocation candidates deserve to be factored into our average person?

The Peitioners, in their Brief, rely on a trump card theory when considering aesthetic degradation being shocking and offensive: "Finally, the Board has repeatedly emphasized that the aesthetics analysis is "significantly informed by the overall societal benefits of the project." In fact, the societal benefits can overcome a conclusion of undue adverse effect under the second step of the Quechee test. In the Georgia Order, for instance, the Board concluded that even if a zoning ordinance, which precluded the project, were a clear, written community standard, the project did not have an undue adverse effect on aesthetics, based on the project's societal benefits." See Petitioners' Brief at Page 5.)

There is no language in the applicable Vermont Statutes that control consideration of this petition for CPG that empower the dilution or disregard of clear statutory mandate by a theory of "societal benefit."

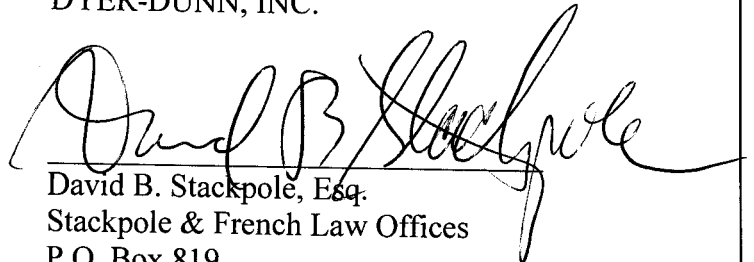
The Supreme Court may consider that the Public Service Board has some quasi legislative function but statutes can only be enacted by the legislature.

III. NOISE FROM THE PROJECT WILL HAVE AN UNDUE ADVERSE EFFECT ON THE USE AND ENJOYMENT OF THE DYER-DUNN, INC. PROPERTY

The Kaliski Testimony and included noise level studies disregard their own evidence where the Dyer-Dunn, Inc. vacation cabin is concerned. The proximity of the cabin to the turbine site and their own findings as to tested base sound level receives no consideration, because they choose to limit their consideration to resident-only dwelling. Second home dwellers are equally as deserving of protection at their houses and it is error to not include them in considering the harmful effect of noise on people occupying structures located in close proximity to the project. In the case of Dyer-Dunn, Inc.'s cabin, the closest to the site as addressed in our initial brief.

DATED at Stowe, Vermont this 4th day of April, 2011.

DYER-DUNN, INC.



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